IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Smt.Ganga Kanwar v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.3981/1996
under Article 226 of the Constitution of India.

Date of Order : 5th August, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.S.Singhvi, for the petitioner.
Ms. Kusum Rao, for the respondents.

BY THE COURT :

By this petition for writ the petitioner sought a direction for the respondents to pay her exgratia grant of Rs.50,000/- with interest and also direction for grant of family pension under the provisions of Rajasthan Service Rules, 1951 (hereinafter referred to as “the Rules of 1951”). The petitioner has also sought a direction for the respondents to provide appointment to her on compassionate grounds under the Rajasthan Recruitment of Dependents (Dying while in Service) Rules, 1975 (hereinafter referred to as “the Rules of 1975”).

The facts required to be noticed for adjudication of present writ petition are as follows:-

The husband of the petitioner Late Shri Mool Singh entered in the services of Government of Rajasthan being appointed as a Class-IV employee under an order dated 23.2.1981 passed by the Additional District Education Officer, Department of Education, Phalodi. The name of Late Shri Mool Singh for the purpose of appointment in Class-IV cadre was sponsored by the Assistant Director, Regional, Employment Office, Jodhpur. Prior to giving appointment to Late Shri Mool Singh regular selection proceedings were conducted and on being found suitable appointment was given to him. Though the selection proceedings were conducted but appointment was given to Late Shri Mool Singh on temporary basis at the consolidated salary of Rs.150/- per month.

Late Shri Mool Singh while working with the respondents was sent on election duty in the month of June, 1988. While on election duty Shri Mool Singh fell ill and subsequently died on 6.6.1988. The petitioner after death of her husband Shri Mool Singh submitted an application to the State Government claiming exgratia compensation as provided under Rule 268-HH of the Rules of 1951. The petitioner also submitted application for grant of appointment to her

on compassionate grounds or to allow family pension to her. Number of representations were submitted by the petitioner to the respondents but of no consequence. The petitioner in these circumstances preferred the present writ petition before this Court through Free Legal Aid (as averred in para 1 of the writ petition) for redressal of her grievances.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the claim made by the petitioner for exgratia payment as well as for family pension was not found sustainable in eye of law by the respondents as her husband Shri Mool Singh was not in regular service of Government of Rajasthan, as such her representations were not accepted. The respondents also averred in reply that Shri Mool Singh was working at the consolidated salary of Rs.150/- per month on casual basis, therefore, no direction in present writ petition can also be issued for grant of exgratia payment and for grant of family pension to the petitioner.

Heard counsel for the parties.

The facts averred in the petition are not in dispute as the respondents admits the fact that Shri Mool Singh while in their employment was assigned election duties and during those duties he fell ill and ultimately died on 6.6.1988. The sole reason for

denial of exgratia payment and family pension is that husband of petitioner Shri Mool Singh was not in regular appointment of the respondents.

The petitioner has claimed exgratia payment as provided under Rule 268-HH of the Rules of 1951. Rule 268-HH to the extent it is relevant in present controversy reads as under:-

> "268HH.(1)Subject to the provisions of this Chapter except as otherwise provided, an 'ex-gratia grant' shall be admissible under sub-rule(2) to the family of a Government servant who dies while on duty in one of the following circumstances,
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> (f)While on duty, at own headquarter or outside headquarter, in connection with special assignments like "Election duty", "Census work" and/or such other assignments which do not fall within normal duties of the post held.
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> (2)(a)The amount of ex-gratia grant, when the Government servant dies under the circumstance mentioned in clause (a) of sub-rule(1) shall be as follows:-

Emoluments of Government servant	Amount of ex-gratia grant
(i)Upto Rs.1680/-	Rs.10,000/-
(ii)Above Rs.1680 but below Rs.3050/-	Rs.15,000/-
(iii)Rs.3050-and above	Rs.20,000/-

(b)The amount of ex-gratia grant, when the government servant dies under any of the circumstances mentioned in clause (b) to (f) of sub-rule (1) shall be as follows:-

Emoluments of Government servant	Amount of ex-gratia grant
(i)Upto Rs.1680/-	Rs.50,000/-
(ii)Above Rs.1680/- but below Rs.3050/-	Rs.75,000/-
(iii)Rs.3050/- and above	Rs.1,00,000/-

Provided the amount of ex-gratia grant, when the Government servant dies while on duty, at own headquarter or outside headquarter, in connection with Election duty would be Rs.1,00,000/- irrespective of the emoluments of the Government servant."

The exgratia grant under Rule 268-HH of the Rules of 1951 is allowed to family of a Government servant who dies while on duty, in the circumstances mentioned in sub-rule(1) of Rule 268-HH of the Rules of 1951. Admittedly husband of the petitioner died while on election duty. The denial for exgratia payment by the respondents was made to the petitioner by saying that her husband was not a Government servant. The appointment was given to the husband of the petitioner as a Class-IV employee at consolidated salary under an order dated 23.2.1981 and he remained in employment of the respondents uptil his death on 6.6.1988. Late Shri Mool Singh in this way remained in employment of the respondents for a period of more than 7 years.

Precisely the question required to be examined is that whether Shri Mool Singh was in regular employment of the respondents or not? His Excellency the Governor of Rajasthan in exercise of powers conferred by proviso to Article 309 of the Constitution of India framed the Rajasthan Class-IV Services (Recruitment and Other Service Conditions) Rules, 1963 (hereinafter referred to as "the Rules of 1963") regulating the recruitment to post in and the conditions of service of persons appointed to the Rajasthan Class-IV service.

Chapter IV of the Rules of 1963 prescribes procedure for direct recruitment. Rule 14 of the Rules of 1963 provides that the application for direct recruitment to the post in service shall be invited by the appointing authority from the persons whose names have been registered in employment exchange by advertising vacancies to be filled in in such manner as may be deemed fit. Rule 15 of the Rules of 1963 provides that the appointing authority shall scrutinise the applications received and required as many candidates qualified for appointment under the Rules as seem to him desirable to appear before him for interview. Rule 16 of the Rules of 1963 provides that the appointing authority shall prepare a list of candidates whom he considers suitable for appointment to the posts concerned, arrange in order of merit and

appoint them in the same order subject to provisions of Rule 8. Rule 8 of the Rules of 1963 pertains to nationality of candidates desirable for appointment. For regular appointment under the Rules of 1963 a person desirous is required to undergo the selection procedure referred above.

Shri Mool Singh Bhati, husband of the petitioner entered in the services of the respondents under the order dated 23.2.1981. From perusal of order of appointment it is apparent that his name was sponsored by the employment exchange and thereafter he was subjected to an interview and was found selected by a competent selection committee for the purpose of appointment as an employee in Class-IV cadre. The respondents, therefore, adhered the procedure prescribed for selection in Class-IV cadre while giving appointment to Late Shri Mool Singh. Shri Mool Singh remained in employment of the respondents for a period of more than 7 years. This fact also establishes it well that he was working against a permanent post. In view of it there is no reason for not treating Late Shri Mool Singh as a Government servant and a regular member of Class-IV service under the Rules of 1963. In fact the respondents wrongly allowed consolidated pay of Rs.150/- per month to Late Shri Mool Singh. Shri Mool Singh was required to be employed in regular pay scale applicable for the post of Class-IV employee.

In view of whatever stated above, I am of the considered opinion that Late Shri Mool Singh was working with the respondents in substantive capacity in Class-IV cadre of the Rajasthan Government Services, therefore, he was a Government servant. The respondents are required to extend and apply the provisions of Rule 268-HH qua the petitioner being widow of Late Shri Mool Singh. She is also entitled for family pension as provided under Rule 268-C of the Rules of 1951. The petitioner is also entitled to be considered for appointment on compassionate grounds under the Rules of 1975 (as existing at the time of death of Shri Mool Singh), however, as sufficient long time has been passed after death of Shri Mool Singh, therefore, I do not consider it appropriate now to direct respondents at this belated stage for appointment on compassionate grounds.

In view of whatever discussed above, this petition for writ deserves acceptance. The same, therefore, is allowed. The respondents are directed to allow exgratia grant to the petitioner in accordance with Rule 268-HH of the Rules of 1951 and further allow her family pension from the date of death of Late Shri Mool Singh i.e. 6.6.1988. The respondents are further directed to pay interest upon the arrears accruing in favour of the petitioner as a consequence of directions made above @ 7% per annum from 6.6.1988.

The respondents are directed to comply with the directions given above within a period of three months from the date they receive certified copy of this order. The registry of this Court is directed to send a certified copy of this order to the respondents NO.3, 4 and 5 forthwith by registered post for taking appropriate action by the officer concerned for compliance of the order.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.